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File No. 15295-8909

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

BYRON SMITH,

Plaintiff,

vs.

NEVER SINK MEDIA LLC,

Defendants.

Case No. 1:18-cv-04292-PKC-CLP

Civil Action

**ANSWER**

Defendant Neversink Media Group, LLC ("Defendant"), having its primary business office at 516 East 3rd Street, Brooklyn, New York 11218, by way of Answer to the First Amended Complaint of Byron Smith ("Plaintiff"), states as follows:

**NATURE OF THE ACTION**

1. To the extent that the allegations in this paragraph are deemed to be allegations of law, Defendant is not required to plead thereto; to the extent the allegations of this Paragraph are deemed to be allegations of fact, Defendant denies each and every allegation contained in this paragraph.

**JURISDICTION AND VENUE**

2. The allegations in this paragraph are allegations of law and Defendant is not required to plead thereto.

3. The allegations in this paragraph are allegations of law and Defendant is not required to plead thereto.

4. The allegations in this paragraph are allegations of law and Defendant is not required to plead thereto.

### **PARTIES**

5. Defendant lacks knowledge sufficient to form a belief as to the allegations and leave Plaintiff to its proofs with respect to the allegations in this paragraph.

6. Defendant admits the allegations in this paragraph.

### **STATEMENT OF FACTS**

7. Defendant lacks knowledge sufficient to form a belief as to the allegations and leave Plaintiff to its proofs with respect to the allegations in this paragraph.

8. Defendant lacks knowledge sufficient to form a belief as to the allegations and leave Plaintiff to its proofs with respect to the allegations in this paragraph.

9. Defendant lacks knowledge sufficient to form a belief as to the allegations and leave Plaintiff to its proofs with respect to the allegations in this paragraph.

10. Defendant lacks knowledge sufficient to form a belief as to the allegations and leave Plaintiff to its proofs with respect to the allegations in this paragraph.

11. Defendant denies each and every allegation contained in this paragraph.

12. Defendant denies each and every allegation contained in this paragraph.

### **FIRST CLAIM FOR RELIEF** **COPYRIGHT INFRINGEMENT AGAINST NEVERSINK** **(17 U.S.C. §§106,501)**

13. Defendant repeats and re-alleges each and every response set forth above as if fully set forth at length herein.

14. Defendant denies each and every allegation contained in this paragraph.
15. Defendant denies each and every allegation contained in this paragraph.
16. Defendant denies each and every allegation contained in this paragraph.
17. Defendant denies each and every allegation contained in this paragraph.
18. Defendant denies each and every allegation contained in this paragraph.
19. Defendant denies each and every allegation contained in this paragraph.

**SECOND CLAIM FOR RELIEF**  
**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST**  
**NEVERSINK**  
**(17 U.S.C. §1202)**

20. Defendant repeats and re-alleges each and every response set forth above as if fully set forth at length herein.

21. Defendant denies each and every allegation contained in this paragraph.
22. Defendant denies each and every allegation contained in this paragraph.
23. Defendant denies each and every allegation contained in this paragraph.
24. Defendant denies each and every allegation contained in this paragraph.
25. Defendant denies each and every allegation contained in this paragraph.
26. Defendant denies each and every allegation contained in this paragraph.
27. Defendant denies each and every allegation contained in this paragraph.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant demands judgment dismissing the Complaint, for counsel fees, costs and other such relief as the Court deems equitable and just.

**FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in part or in whole, by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in part or in whole, by the equitable doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in part or in whole, by the equitable doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in part or in whole, by the equitable doctrine of estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in part or in whole, by the equitable doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his damages, if any.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred, in part or in whole, because any statements that were made were made in good faith, honestly and without malice.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent Plaintiff failed to register copyrights within the meaning of the Copyright Act, *17 U.S.C. § 101et seq.* or trademarks within the meaning of the Lanham Act, *15 USC § 1125et seq.*

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because Plaintiff and Defendant jointly owned copyright interest in the photograph at issue and had rights to use the photograph.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have suffered no damages and any damages alleged are too speculative and imprecise.

**TWELFTH AFFIRMATIVE DEFENSE**

Statutory damages sought by Plaintiff are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The alleged conduct in whole or in part constituted fair use.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, the alleged conduct was authorized.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, any harm, if any, which was sustained by plaintiffs was as a result of their own culpable conduct.

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by Jury.

Dated: Secaucus, New Jersey  
December 14, 2018

**CHASAN LAMPARELLO MALLON &  
CAPPUZZO, PC**

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